**FARAD CONTINUATION SHEET NO.**
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**APPELLATE SIDE**
**NAGPUR BENCH, NAGPUR**

Writ Petition No. 3588/2007
**(** Murlidhar Sansthan, Kupta ***VERSUS*** Nana Rajaram Nagolkar**)**

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| Appeal | District : |
| Application No. | of 200 |
| Writ petition | |

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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Mr. De, counsel for the appellant.
Mr. Gode, counsel for the respondent.

**CORAM : Smt. Vasanti A. Naik, J.**
**DATED : 1st November, 2007.**

Heard the learned counsel for the parties.

By this petition, the petitioner challenges the order passed by District Judge-I, Washim dated 20.06.2007 allowing the Misc. Civil Appeal filed by the respondent and setting aside the order of temporary injunction granted in favour of the petitioner by the trial Court by an order dated 06.12.2006.

the petitioner is the original plaintiff. It was the case of the plaintiff that the plaintiff trust was the owner and possessor of the land bearing Nazul Sheet No.418 of the defendant was attempting to

construct his house by making encroachment on the north-eastern corner of the premises of the plaintiff trust. The plaintiff, therefore, sought a temporary injunction restraining the defendant from making construction on the north-eastern corner of the plaintiff's property.

The defendant denied the claim of the plaintiff as also the ownership of the plaintiff over the suit property. It was pleaded by the defendant that the defendant had been in possession of the land since more than 100 years and had already constructed a house thereon. It was pleaded by the defendant that the house of the defendant was constructed on Government land bearing Nazul Sheet no.416 which was adjacent to Nazul Sheet no. 418 which belonged to the plaintiff. The trial Court had, however, by an order dated 06.12.2006, granted temporary injunction in favour of the petitioner. It was held by the trial Court that it may be true that the defendant had been in possession of a house of Nazul Sheet no.416 and the suit

premises and Nazul Sheet No.416 were entirely different properties but, since Nazul Sheet no.418 and Nazul Sheet no.416 were situated adjacent to each other, there was a possibility of encroachment by the defendant upon the suit premises. The trial Court observed that it was probable that while constructing his dilapidated house on Nazul Sheet no.416, the defendant possibly, knowingly or unknowingly attempted to encroach upon the suit premises of the plaintiff trust. After making the aforesaid observations, the trial Court held that the plaintiff had a prima-facie case and the balance of convenience was also in favour of the plaintiff. The trial Court, therefore, granted temporary injunction in favour of the plaintiff.

The District Judge-I, however, by an order dated 20.06.2007 reversed the findings recorded by the trial Court and allowed the appeal filed by the defendant. The appellate Court observed that the defendant had constructed a house on Nazul Sheet no.416. The Court observed that the properties

namely Nazul Sheet no.416 and 418 were all together different and the plaintiff had no concern whatsoever with the Government land whereupon the defendant had constructed a house. The Court further observed that the defendant had prima-facie proved that the defendant was residing in the house on Nazul Sheet no.416 for a long time. The first appellate Court, therefore, held that the plaintiff had no concern with the Government land where the defendant had constructed a house, and therefore, in such circumstances, it cannot be said that irreparable loss and injury would be caused to the plaintiff if injunction was refused. The Court also observed in paragraph 8 that the plaintiff had not joined all the trustees as parties to the suit, and therefore, the suit was not tenable. The Court observed that the suit being not tenable, the application for grant of temporary injunction was also not tenable. The order passed by the District Judge-I on 20.06.2007 is challenged in the instant petition.

It is submitted on behalf of the petitioner by the learned counsel that the appellate Court was not justified in holding that the suit filed by the plaintiff was not tenable as it has been laid down by this Court in the decision reported in **1981 Mh.L.J. 573** that even a *de-facto* trustee or one in *de-facto* management of the trust is entitled to take steps against a trespasser. It was then submitted by relying on a decision reported in **2001 (1) Mh.L.J. 836** that the adjoining owner or neighbour has locus standi to file a suit for injunction, complaining about the infraction of municipal bye-laws invading his rights and the jurisdiction of the civil Court to maintain such suit is neither expressly nor impliedly excluded. According to the counsel for the petitioner since the respondent had not taken permission of the authorities before making the construction, the plaintiff had a right to institute the present suit and also to seek an injunction against the respondent/ defendant.

The counsel for the respondent, on the

other hand, supported the order impugned in the instant petition.

The submissions made on behalf of the counsel for the petitioner are unacceptable as the trial Court has also not held that the rights of the plaintiff were affected by the construction made by the defendant on Nazul Sheet no.416. In fact, the trial Court has not recorded a categorical finding that the defendant had encroached upon the land of the plaintiff and had merely observed in the order granting temporary injunction that there was a possibility of encroachment by the defendant upon the suit premises as though Nazul Sheet no.416 and 418, were entirely different properties, they were adjoining each other.

The appellate Court, however, observed that the defendant had constructed a house on Nazul Sheet no.416 on which the plaintiff had not claimed the ownership. The two properties, Nazul Sheet no.416 and 418 were, no doubt, adjoining properties but, the plaintiff had failed to produce

prima-facie evidence on record to show that the defendant had encroached upon the land of the plaintiff and had constructed the house on Nazul Sheet no.418. In fact, the first appellate Court observed that the plaintiff had no concern with the Government land where the defendant has constructed a house. In view of aforesaid prima-facie findings recorded by the trial Court, the appellate Court rightly reversed the findings recorded by the trial Court while granting temporary injunction in favour of the petitioner as the trial Court had erroneously reached to a prima-facie conclusion that there was a possibility of the defendant knowingly or unknowingly encroaching upon the suit premises.

Though the first appellate Court had recorded that the suit was not tenable because all the trustees were not joined as parties to the suit, that was not the sole reason for allowing the appeal filed by the defendant. The question of applicability of the judgment reported in **1981 Mh.L.J. 573**

would not arise for consideration at this stage. In fact, the first appellate Court had allowed the appeal filed by the defendant as the first appellate Court came to a conclusion that the defendant had not constructed on the property of the plaintiff though it was the case of the plaintiff that the defendant had encroached on the plaintiff's property. The decision reported in **2001 (1) Mh.L.J. 836** is also of no assistance to the case of the petitioner as the appellate Court has not observed that the civil Court has no jurisdiction to maintain the suit filed by the plaintiff. It is further notable that the Division Bench of this Court has observed in the aforesaid reported decision that the adjoining owner or neighbour has the locus standi to file a suit for injunction complaining infraction of municipal bye-laws invading his rights. In the instant petition, neither of the Courts has reached to a prima-facie conclusion that the rights of the plaintiff were invaded by the construction made by the defendant on Nazul Sheet no.416. Moreover, the plaintiff in the reported

decision had claimed an easementary right by prescription. Such is not the case here.

In the facts and circumstances of the case, there is no error whatsoever in the impugned order passed by the appellate Court much less an error of jurisdiction so as to invoke the jurisdiction under Article 227 of Constitution of India. The writ petition is, therefore, dismissed with no order as to costs.

**JUDGE**

APTE